IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9696 OF 2004

The Municipal Corporation of
City of Thane. ... ... Petitioner.

Versus

Ashokkumar Bibhuti Narayan Rai. .... Respondent.

Mr. R. S. Apte for the Petitioner.

None for the Respondent.

CORAM : S. A. BOBDE, J.

DATED : 21ST MARCH, 2005.

P.C.:

Notice for final disposal was issued on 21st February, 2005. Though duly served, none appears for the respondents. Hence the matter is being proceeded with.

2. The petitioner, Municipal Corporation of City of Thane, is Defendant in a Suit being R. C. S. No. 436 of 2004 filed by the respondent plaintiff before the Civil Judge, Junior Division, Thane in respect of the levy of octroi by the petitioner.

3. The petitioner Corporation preferred an application under Section 9A of the Code of Civil Procedure inter alia contending that the respondent is entitled to file an appeal under Section 406 of the Bombay Provincial Municipal Corporations Act, 1949. The trial Court, taking the view that the decision involves a mixed question of facts and law, came to the conclusion that the subject matter of the civil suit comes within its jurisdiction. The Trial Court has not recorded any evidence. It has come to the conclusion that it has jurisdiction on the basis of the address of the plaintiff.

4. Without going into the merits of the matter, I am of view that the impugned order suffers from an error of law apparent on its face in view of the judgment of this Court in **Meher Singh v/s Deepak Sawhny & anr.**, 1999 (1) Bom. C. R. 107. This Court observed as follows:

> "Question of jurisdiction, even if it is a mixed question of law and fact, it is required to be decided first. For deciding the said issue, the parties are entitled to

lead evidence, oral as well as documentary, as that issue is required to be tried and adjudicated finally by the Court. The determination of the said issue is not only for the limited purpose of granting interim relief or vacating interim relief. It is true that this procedure requires piecemeal determination of the suit, but that cannot be avoided because of the mandate of section 9-A. According to the Legislature, the practice of granting injunctions without going into the question of jurisdiction even though raised, has led to grave abuse. Hence the said section is added to see that issue of jurisdiction is decided as a preliminary issue notwithstanding anything contained in the Civil Procedure Code, including Order XIV, Rule 2. Once the issue is to be decided by raising it as a preliminary issue, it is required to be determined after proper adjudication. Adjudication would require giving of opportunity to the parties to lead evidence, if required."

5. The impugned order is, therefore, set aside. The trial Court shall decide the question of jurisdiction raised by the petitioner under Section 9A of the Code of Civil Procedure before proceeding further.

6. With the above observations, this petition is disposed of.

Sd/-

(**S. A. BOBDE, J.**)